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# A Crisis in Insurance

*Benjamin Lipson*

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*As the life and health insurance industry evaluates its long-term financial goals, the cloud of Black Monday — October 19, 1987, the day the stock market collapsed — blurs its cherished investment income projections. With investment portfolios under siege, mutual life insurance companies and stock companies alike are wary of making policy-pricing miscalculations that could prove to be disastrous. As if that weren't enough, one single disease — acquired immunodeficiency syndrome — looms as the most serious threat to life and health insurers for the remainder of this century. The spread of the new disease has caused insurers to adjust their underwriting requirements by insisting on tests for the AIDS antibody as a precondition for obtaining insurance. Increasingly, life insurance companies are prepared to curtail the availability of insurance in states that place restrictions on testing for insurance purposes. There are also important privacy issues that must be adequately addressed if systematic abuse of the individual's right to privacy is to be avoided.*

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**T**he liability insurance industry has been in crisis since the early 1980s, when soaring prime rates and double-digit investment returns led insurance companies, with their huge pools of capital, into the equity, investment, and other riskier markets. What's more, they decided that by dropping the prices on insurance products, they could attract even more premium dollars to invest.

That cash-flow underwriting of the early 1980s, fueled by double-digit interest rates and aggressive marketing, gave way to a limited availability of liability insurance and significant rate increases.

Doctors started to leave the practice of medicine. Municipal pools and parks and youth hockey rinks were closed. Children's products were taken off the market. The availability of goods and services providing comfort, recreation, and the necessities of life was threatened, and to this day many tavern owners are closing their premises because they cannot

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obtain adequate, affordable liability insurance.

While this was going on five years ago, an inflationary spiral was evolving which dramatically increased the cost of litigation and health care — major factors involved in the payment of liability losses. This coincided with a heightened public awareness of consumer rights in liability situations. Many lawsuits were generated and many claims were filed as the public decided to get its full share of compensation for the pain and suffering of an accident or for a product failure.

Then interest rates began to drop. Property and liability insurers found themselves in a crisis. They had to increase premiums and eliminate writing certain classes of business, such as medical malpractice, product liability, and pollution liability.

Making things worse were increasingly liberal court interpretations that delivered liability judgments never before contemplated. Imagine a New Year's reveler leaving a house party, crashing his automobile into a tree, and ultimately suing the homeowner, his host. Lawyers have been successful in suits in which it was shown that the homeowner was careless in overseeing the dispensing of alcohol.<sup>1</sup>

Improved 1987 operating figures for the property and casualty insurance companies reflected the results of their stringent underwriting practices. Happily, the situation is still improving, with rate relief available for consumers. The trend seems to be reverting to more reasonable rates in the property insurance field and for certain liability coverages, other than medical malpractice, products, and pollution coverage.<sup>2</sup>

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### **Will a Frightened Industry Want to Respond to Legitimate Consumer Concerns?**

The AIDS crisis is confounding the impact of this otherwise positive trend. As a result of this unprecedented disease, American consumers are finding it riskier to purchase adequate, affordable life and health insurance without giving away one of their most precious possessions, their privacy. Insurance companies, long the exemplars of corporate achievement, now have to contend with the impact of AIDS on the total mortality among their clients, a risk not contemplated when most of their insurance was sold and underwritten. Employers, worried about the infection spreading among their work force, have begun looking for loopholes in their fringe benefit packages, long a vested right for the U.S. worker. And, given the skyrocketing growth of AIDS cases, life and health insurance companies have begun to wonder how long they will be able to offer even the self-insured forms of coverage.

The biggest problem in the AIDS crisis — for the insurance industry — is viability in the face of a swelling claims experience. The biggest problem for consumers, however, is protecting themselves from the insurance industry as it decides how it is going to cope with the crisis. The early returns are not good for consumers. Instead of facing up to the problem, the insurance industry is treating the issue with benign neglect. Consumers' rights to privacy have been abused by secret testing for AIDS. Worse, people with other conditions — coronary artery disease, high blood pressure, cancer, diabetes, alcoholism, and mental illness, histories that ordinarily would not have prevented them from buying insurance, even if at a higher premium — are the victims of AIDS-related discriminatory practices spreading throughout the industry.

In the case of preferred risks, persons who have nothing significant in their medical histories are being asked to document in great length and detail minor sore throats and



colds. Heretofore, these conditions were not considered by underwriters. But given the AIDS mentality, underwriters now fear the worst and are constantly vigilant about any condition, no matter how slight or how remote, in the event that it could be a by-product of the AIDS antibody.

Persons with controllable hypertension, successful recoveries from bypass surgery, and histories of elevated cholesterol and other abnormal blood chemistries are being looked at closer than ever, and are being accorded few accommodations by underwriters, who would prefer to err on the side of caution in the rating of substandard risks to compensate for any adverse mortality that could develop from AIDS-related claims for insureds already on the books.

In evaluating all of this turmoil, one must take cognizance of the pressures being applied to the insurance industry today. Gone is the era when the actuarial tables ruled, when policy sales leaped from year to year, and when the masses faithfully remitted their premiums, all to the glory and profit of the underwriters. Actuarial tables, commonly representing valid statistical data of the past combined with current actuarial assumptions about life expectancy, could be relied upon to predict future mortality — until now. They have been predictors of the future, but they have no accurate actuarial measurement of the adverse mortality of AIDS-related claims which could develop from not only risks on the books, but individuals who are tested and who could acquire the disease in the future.

Today, some companies are wondering how long they can last. Consider TransAmerica Occidental Life, whose senior vice president David Gooding has stated publicly that from 1982 to 1986 the AIDS risk in life insurance cost the industry twenty times what it would assume for a person who was healthy according to insurance industry standards.

Early in 1986, Gooding told the National Association of Insurance Commissioners that insurance companies must adopt new, carefully thought out policies and practices if they were to remain solvent and meet the claims of tens of millions of policyholders.<sup>3</sup>

Given the threat of AIDS-related claims, coupled with insurers' use of junk bonds, state regulators have begun to take notice. In January 1987 the New York State Insurance Department acted to better monitor the solvency of insurers in order to guarantee that funds would be available to provide the benefits promised to consumers. Authorizing Regulation 126, the department now requires life insurers to match assets with liabilities when evaluating annuities, annuity benefits, and guaranteed-interest contracts.<sup>4</sup>

New York, which was the first state to implement such stringent measures, felt they were necessary in order to prevent the occurrence in the insurance industry of something similar to a run on a bank. Regulation 126 assumes increased significance as long as insurers continue to use junk bonds as the investments backing the projected yields of certain insurance products.<sup>5</sup>

The required methodology is complex and highly technical and necessitates the use of various scenarios and projections by the actuaries to determine the insurance company cash flow when there are various fluctuations in interest rates and different demands for surrenders. The practice is intended to establish the appropriate safeguards to prevent a future drain on company surplus.

Meanwhile, the insurance business goes on. Companies continue to issue life and health policies with the full legal, moral, and fiduciary obligation to their stockholders to make a profit and underwrite prudently. Companies can, by right, accept and reject risks and set premiums according to sound underwriting practices. But this process does not include the right to condone a system that misleads, deceives, or abuses the privacy rights of any

insurance applicant. This is the AIDS era, however, and there have been deceptions and abuses.

While the broad effect of AIDS on the insurance industry concerns both life and health coverage, the way in which this disease will impinge upon both companies and individuals who are struggling to provide health care to the afflicted is especially poignant. There is no better way to understand the personal impact of AIDS than by reading a letter like the following one, from an anonymous Boston reader of my column, "Insurance":

My lover has AIDS. I think I could be a carrier of the AIDS antibody, but I have no intention of taking any blood tests. A positive test result would serve no useful purpose.

My lover and I have insurance questions, as he is reaching the point where he can no longer work full-time. He plans to leave the state to return to his place of birth to die. I wish to relocate there with him. This will involve a change of jobs on my part. We're worried about the future of our health-care insurance and have questions about our coverage. We already know he will face thousands of dollars of expenses and I could be in the same boat, someday. It is difficult to get a direct answer from any credible source. We get a different story from everyone we speak to. We fear breaches of privacy if we make formal requests for the information we need. He is covered under an HMO (health maintenance organization) plan, I'm covered by Blue Cross-Blue Shield. Can you help us?<sup>6</sup>

This letter underscores the truly devastating human cost of AIDS. Imagine how the panic will grow as AIDS spreads more widely, into the heterosexual population, and millions of people suddenly begin to wonder who will pay for their medical costs, their living expenses, and the expenses and costs of their families. AIDS will become synonymous with another ugly word — bankruptcy. In fact, in many cases, it already has. Consider the following statistics:<sup>7</sup>

- The average medical costs associated with AIDS are \$97,000 *per patient*. Recent studies found that average lifetime costs range from \$45,000 in special managed-care situations to up to \$140,000.
- As of January 18, 1988, the cumulative number of AIDS cases reported in the United States was 51,361. Of that number, 28,683 are known to have resulted in death, 56 percent of the total.
- By the end of 1991, 270,000 cumulative cases of AIDS will have been reported in the United States, 179,000 of them fatalities (58 percent). In a 1986 survey, the American Council of Life Insurance (ACLI) attempted to measure the extent of AIDS-related claims. Companies writing 46 percent of the life and health insurance coverage in the United States responded. Adjusting the figures to cover 100 percent of the people in the market, it is estimated that AIDS-related death claims in 1986 were about \$292 million.
- The average AIDS death claim on individual policies was \$30,500, compared with the average claim of \$7,300 on all policies. (The lower figure represents policies that have been on the books for thirty years or more and whose value is unadjusted for inflation.)



The average group life claim has been \$27,000 for AIDS-related cases; the average group health claim has been \$13,800. The ACLI has said that the cost of health care associated with AIDS claims varies from \$45,000 on the West Coast to \$140,000 on the East Coast; the average claim is about \$97,000, according to 1986 estimates.<sup>8</sup>

Insurance consultant Barbara Lautzenheiser is a former vice president of the Phoenix Mutual Life Insurance Company and a past president of the National Association of Actuaries. In a speech to life insurance underwriters in New Orleans in the spring of 1987, she detailed a chilling cost scenario:

Assume that 100 men who are infected with the AIDS virus are issued insurance because of the insurance company's inability to test for the infection. Assume each is age 34 and purchases \$100,000 of term insurance, the cheapest form of coverage that builds no cash values. The average premium for the next seven years for that form of coverage is \$199 per year. Assume none of these persons dies for the whole of seven years, then 20 percent die (the lowest percent expressed by the Centers for Disease Control). The total death benefit payable is  $20 \times \$100,000$  equals \$2 million.

How can the insurance company afford to pay out \$2 million when all it has collected is \$139,300?<sup>9</sup>

And if this is not chilling enough, consider the facts quoted by Lautzenheiser from a January story in the *Navy Times* citing military research that suggests AIDS may kill 99.9 percent of those who are exposed to the AIDS virus.<sup>10</sup>

Comments by Dr. James Mason, director of the federal Centers for Disease Control (CDC) in Atlanta, Georgia, seem to confirm the degree of severity reported by the *Navy Times*. "If we observe these infected individuals long enough," said Dr. Mason, "a figure approximately 100 percent of those infected will develop symptoms of this disease, which is eventually fatal."<sup>11</sup>

That deadly prospect has the gay male community, especially in California, in a panic, Lautzenheiser told the audience of underwriters in New Orleans. "Their greatest concern is testing itself, because of fear of losing their jobs if the employer finds out they tested positive; fear of the test results being recorded by name, so that there is a list that can be subpoenaed and those on the list quarantined." Further, she said, "the issue now is money, through health insurance to pay their health-care costs and through health insurance to pay their 'partner's' health-care costs. Money will become even more important as the size of the gay community becomes smaller and their less costly self-support system vanishes."

Lautzenheiser had a warning for her insurance audience: The gay community is large and influential, and it votes. Many gay men donate substantial amounts of money to politicians who support their cause. Moreover, the gay male bloc is only one special-interest group. "What will the diabetic or cancer foundations do when they find out they have to pay substandard rates or can't get insurance when those infected with the AIDS virus can get insurance at standard rates?" she asked. "What about those with multiple sclerosis, muscular dystrophy, epilepsy, or any of the other diseases, particularly those which get high television visibility? Can't you see a Labor Day Telethon on how Jerry's Kids were discriminated against by the insurance industry?"<sup>12</sup>

These comments make an implicit statement about the cost of insuring a person with AIDS: Once a person has AIDS, it doesn't abate. He or she is always faced with the almost certain probability of dying. Therefore, a person with AIDS is uninsurable. In the case of heart attacks, for instance, there are all types and severities. People who have

coronary attacks have the potential to recover; after five to eight years of recovery, they can usually buy insurance at standard rates. Depending on how young they are when the disease begins, diabetics have a more difficult time buying insurance. Juvenile diabetics are virtually uninsurable because of their high mortality rate. Persons between the ages of twenty and forty-five will pay heavy extra premiums; those between the ages of forty-five and sixty will pay moderate extra rates; persons over sixty will pay near-standard rates. Once a person is "rated" for diabetes, however, the surcharge is never removed.

Other temporary conditions that can cost extra premiums are hypertension, elevated cholesterol, and elevated triglycerides. In cases such as these, a change in lifestyle, a loss of weight, and strict adherence to a medical regimen can often result in an improved condition. That's usually enough of a reason for the insurer to consider reducing or eliminating any extra premium being charged.

AIDS cases, however, don't get less expensive, at least not yet. Consequently, the only recourse for many families and friends of persons with AIDS is to find ways to offer support. In Boston, the gay male community has, to its credit, provided help with specific activities. The AIDS Action Committee held fund-raisers and distributed more than \$150,000 in FY'87 for direct financial assistance. Additionally, the committee provided many basic services not available from professionals, such as transportation, a meals-on-wheels program, practical home care and counseling services, and support from volunteer nonprofessionals.

In San Francisco, the gay male community has conducted similar volunteer programs. A California study showed that the cost of care for AIDS patients in San Francisco in their final eighteen months of life averaged \$52,000 to \$74,000, well below the national figure of \$147,000 and the state's \$65,000 to \$110,000.<sup>13</sup>

The solution for most long-term AIDS sufferers is turning to government assistance. Most find themselves on welfare soon after beginning to suffer the most debilitating effects of the disease. Nationally, about 40 percent of AIDS patients turn to Medicaid, and their dependence becomes absolute on support such as food stamps, local welfare programs, Social Security Disability, and Supplemental Security income.

Nor is insurance the total answer to AIDS-related expenses, the sufferers and their families have found. One agency in New York City, Gay Men's Health Crisis, estimates that fewer than 30 percent of its clients with private health insurance will receive payments for prescription drugs. This statistic becomes more relevant to the AIDS patient as new and costlier drugs are developed each year. Treatments with AZT, a new drug that some say holds the best hope yet for treating AIDS, can cost up to \$10,000 annually.<sup>14</sup>

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## **The Testing Dilemma**

Nowhere in the AIDS dilemma is the push-pull between business and humanitarian interests more evident than in the debate about testing. Insurance underwriters, bound by their responsibilities to directors and investors, will continue to press for unlimited testing. Rights activists, concerned that testing is a potential threat to civil liberty, will continue to call, at the very least, for limitations to general testing. Consultant Barbara Lautzenheiser has urged life insurance underwriters to work to block any legislation to ban AIDS testing. According to Lautzenheiser, any interference with AIDS testing poses a major threat to the risk classification system upon which the insurance industry bases its ability to approve or deny an application for insurance. With antitesting laws in place in California, Wisconsin, and Washington, D.C., she says, some companies have simply stopped issuing



life insurance. “Washington, D.C.’s legislation is so severe — not even allowing a non-AIDS-specific test, called the T-cell test — [that a] Harvard University study reports that of the sample they took, 80 percent of the life insurance companies have ceased writing [policies] in the district. . . . California still allows the T-cell test, but one company announced on April 1 that it has withdrawn from that state, too.”<sup>15</sup>

It remains to be seen whether company pullouts are for real or whether they are just a threat aimed at securing leverage with state legislatures and insurance commissioners who may be considering similar actions. It is expected that several state legislatures and insurance regulators will be called upon to act on some form of testing for their states during 1988. Testing, unfortunately for our civil liberties, is the insurance industry’s most accurate method of identifying who among their potential policyholders is an AIDS threat. Every New England state except Connecticut has proposed legislation that, while controlling or limiting test procedures, would in fact allow testing to take place. In Massachusetts, an attempt by Insurance Commissioner Peter Hiam to be protective about AIDS testing eventually cost him his job.<sup>16</sup>

The practice of using blood testing as a general underwriting requirement on cases involving \$1 million or more came about ten years ago, when life insurance companies discontinued the practice of requiring two examinations on two different days by two different medical examiners. Applicants complained about the inconvenience of the procedure and said that the second examination was simply a duplicate of the first. Worse, some companies discovered that they were being charged for a second examination that in fact had not been done. Underwriters decided that blood tests could give them more information and more protection than a second examination.

It became common, if a life insurance applicant had a history of an abnormal blood chemistry — indicative of diabetes, elevated cholesterol, gout, or an abnormal liver function — for a blood test to be taken at the time of the insurance examination. In that way, the company could determine whether there was any change in the applicant’s condition. The underwriting of health insurance differs significantly from underwriting of life insurance. Most health insurance is issued on a group basis. For smaller groups, this usually covers all employees, without any medical examinations or blood tests, but with a “preexisting exclusion rider.” This rider means that certain conditions that existed at the inception of a person’s employment, or eligibility for group health coverage, will be covered only when a predetermined waiting period expires. The “contestable period” can be from three months to three years. (The use of the preexisting exclusion by health insurance underwriters, particularly at claim time, has always been a source of irritation for consumers who do not understand its beneficial significance. There have been cases in which consumers, at the time of application, have had cancer, AIDS, or cardiovascular ailments and have been unaware of these conditions, which would have escaped detection and treatment had there been no test.) For most larger groups, or in some health maintenance organizations, there is guaranteed-issue insurance, without any exclusions for claims and benefits due to preexisting conditions.

A relatively small amount of health insurance is sold on an individual basis. The pricing of individual health insurance does not lend itself to the use of physical examinations and blood testing as underwriting requirements. Rather, these cases are underwritten on the basis of medical information provided by the applicant. The applicant is asked to detail past and present illnesses and to provide the names and addresses of hospitals and doctors consulted.



From this information, health insurance underwriters can determine whether the applicant is eligible for coverage, is required to pay a penalty surcharge, or must be assigned a longer waiting period for a preexisting condition.

In December 1987, because of the exclusion-clause problems with insurance companies, Attorney General James Shannon of Massachusetts proposed a change in the preexisting conditions clause of that state's accident and health (A & H) insurance policies — a change that would make it harder for A & H insurers to deny coverage on this basis.<sup>17</sup> Shannon claimed that this change was based upon model language developed by the National Association of Insurance Commissioners.

In mid-1986, fearing the adverse effect of AIDS mortality, life insurers began to reduce the financial threshold at which blood tests would be required, even if there was no history of any abnormality to justify such testing. The testing threshold by December 1987 became \$100,000 for most life insurers writing business in Massachusetts. On a number of cases in the fall of 1986, some companies were already using this lower threshold on smaller policies to get the client's blood and test it, without his or her informed consent, for the AIDS antibody.<sup>18</sup>

I brought this to the attention of Commissioner Hiam, who said he would enforce his strict regulation banning blood testing and that he would look into this new development. He had made it clear in the past that testing for the AIDS antibody would not be tolerated in Massachusetts. Most insurers complied with the regulation, but others continued the practice, as a way of testing the insurance commissioner's authority to tell them how to conduct business. If they conceded to Hiam on an arbitrary ruling, they reasoned, then they could eventually lose control of their underwriting prerogatives.<sup>19</sup>

In March 1987, Ronald N. Shehade, manager of American Para Professional Systems of Wellesley, a company that draws blood samples for testing, told me: "Laboratory technicians in the field no longer have control over the blood samples. The lab does not acknowledge receipt of the sample, they do not furnish us or you [the insurance applicant] with the results, nor can we or you obtain these results."

Writing about this situation a year ago, I advised consumers to confirm with their insurance agents which tests have been requested from the laboratory, while keeping in mind that the tests vary by company.<sup>20</sup> (Today, however, some laboratories will provide a confirmation describing the tests that might be done.)

At worst, by attempting to influence blood-testing requirements and procedures, some insurers are ignoring the root causes of the disease. Some of them are hiding their heads in the shifting sands of circumstance, pain, and desperation. AIDS is here to stay. If a fail-safe blood test, one that completely eliminated false-positive results, were ever to become available, insurance companies would be in a better position to justify their legitimate concerns about blood screening for the AIDS antibody being a component part of the life underwriting process.

Nevertheless, when testing is a requirement for life insurance, insurers should be more candid with their applicants, telling them just what they expect from persons who buy insurance and why they have established those underwriting guidelines which are in use. They should make it clear to all applicants exactly what will be done with their blood sample after it is drawn, even though in Massachusetts, such disclosure is not mandatory. They should explain the reasons for and the types of tests to be performed by the laboratory on the samples drawn. Most important, they should explain to the insurance applicant how they will guarantee the protection of his or her privacy as reports of the test filter down through the underwriting process.

These things are necessary not only for the financial protection of the public, whose loved ones may — almost certainly will — feel the sting of the AIDS crisis, but also for the protection of the companies that must insure them as well. This is a situation in which the survival of the insurance industry is at stake. The most certain element in all of this is that the future can't be left to insurance industry management, which at times speaks out of both sides of its mouth — crying poverty when looking for legislative help, then becoming aggressive and throwing out the rate books when competing for a sale.<sup>21</sup>

From December 1986 to June 1987, representatives of the insurance commissioner's office carried on negotiations with the insurance industry to develop a fair and equitable blood-testing policy in Massachusetts. In a proposed compromise, insurers would be allowed to underwrite their business and eliminate and screen any applicant who might have AIDS, while preserving the rights of individuals who knowingly agreed to submit to the test.

Negotiations broke down, and because of the politics involved, Hiam resigned on the eve of the issuance of Governor Michael S. Dukakis's blood-testing plan. That plan was opposed by the industry, because it required blood testing in applications for more than \$100,000 of life insurance and imposed an onerous administrative burden on companies to enforce the very rigid requirement of privacy and confidentiality spelled out in the proposed regulation. Persons applying for less than \$100,000 do not face a mandatory blood test requirement.

Consumer groups opposed the plan, primarily because of the privacy risks involved in submitting to blood testing. In my newspaper column, I suggested to the governor an alternative that would make available insurance that would exclude any death benefit if death were due to AIDS and for which no blood testing would be required.<sup>22</sup>

Insurers licensed to do business in Massachusetts (with one exception) opposed the concept. They felt that once a policy was in effect for more than two years, they could not contest the circumstances surrounding the death and its preceding events. The companies charged that doctors declared other causes of death, such as pneumonia and various forms of cancer, to mask real cause of death — AIDS — in an attempt to protect the family's privacy.

Proponents of an AIDS exclusion option say it would save insurance companies millions of dollars spent on testing procedures, laboratory fees, lengthy investigative consumer reports, and costly underwriting practices. These funds would then be available to reduce the cost of insurance for all consumers. No insurance industry-related job would be lost, and the insurance companies would continue to invest millions of dollars in the economy through their financing, building, and investments. Opponents of eliminating coverage for AIDS say that once a policy has gone beyond the "contestable period," the insurer has no right to investigate the circumstances surrounding a death. This is a problem because, in many cases, death certificates for AIDS in fact do not tell the true story.

Further, opponents argue, consumers who have no reason to believe they are infected with AIDS would no longer be inhibited from applying for life insurance because of the potential adverse consequences of a test. After insurance had been issued, there would be nothing to prevent an individual from taking an AIDS antibody test on a confidential basis. Even better, individuals with the AIDS antibody, who ordinarily would not be able to buy life insurance, would be able to insure themselves for accidental death or for death caused by other illnesses, such as stroke, heart attack, or cancer.

Apart from the obvious medical and psychosocial impact of the disease, what better



deterrent could a person have to avoid behavior that could result in AIDS than the knowledge that life insurance would become void upon death? What better educational technique could the federal government implement than loss of life insurance for policyholders who develop AIDS?

Savings Bank Life Insurance adopted my recommendation, and it was approved by the new insurance commissioner, Roger M. Singer, when he promulgated another set of AIDS-testing regulations, after two days of hearings (which brought considerable opposition). As of December 1987, Savings Bank Life Insurance had written more than \$1.7 billion of life insurance coverage on Massachusetts residents which excludes coverage for AIDS.

In early October 1987, the Massachusetts Superior Court granted the life and health insurance industry a preliminary injunction against Singer's AIDS regulations. Under the order, the commissioner was prevented from implementing and enforcing his testing rules.<sup>23</sup>

"Failure to issue the injunctive relief prayed for will subject the plaintiffs to a substantial risk of irreparable harm," the court said. "This loss will be immediate and consist of not only unquantifiable economic losses, but loss of good will, deprivation of property rights, and a restraint of the plaintiffs' ability to compete."

The ruling continued: "There is also a serious question raised that the regulation is in violation of the Equal Protection provision of the U.S. Constitution, as well as an unconstitutional delegation of legislative powers under the Massachusetts Constitution."

Perhaps as a warning about the uncertainties of the legal process, the court also remarked: "It appears clear that there is a substantial possibility that the plaintiffs will be successful after a full hearing on the merits."<sup>24</sup>

Now that the battle lines are drawn, insurance applicants are at the mercy of the insurers, who say they are only exercising their legitimate rights and are testing for the AIDS antibody whenever possible.

This controversy can be expected to be played out in the courts for some time. No matter what decision is reached in the Massachusetts Superior Court, it is virtually certain that the case will ultimately land in the U.S. Supreme Court.

The insurance industry is bringing its heavy guns to battle in the Massachusetts courts. It believes that Massachusetts is a bellwether state in the insurance industry — as Massachusetts goes, so goes the nation.

Appreciating the potential liability exposure involved in blood testing, various insurers, including John Hancock, Northwestern, and Massachusetts Mutual Life Insurance Company, have prepared self-serving brochures that are handed to applicants to assuage any concern about the reliability of the testing and the confidentiality of the results. A look at "Why Am I Being Tested?" — a portion of a Mass Mutual brochure issued late in 1987 — illustrates the point:

*Question:* Am I being tested because Mass Mutual thinks I have AIDS?

*Answer:* No. In fact, the Company believes it very unlikely. It is anticipated that the overwhelming percentage (well over 99 percent) of the AIDS antibody tests performed will be negative. [This would seem to underline the concern that there will be false-positive test results.]

Under "What If My Blood Test Comes Back Positive?" we find:



*Question:* Will positive results from the AIDS antibody test also be sent automatically to the MIB [the Medical Information Bureau, a supersecret and highly computerized industry information clearinghouse whose headquarters are in Westwood]?

*Answer:* Yes, but the HIV antibody test results do not have a specific code; they fall under a catchall code used for any blood abnormality that does not have a code of its own. This code indicates that an abnormality has been found, but does not specify which type.

This answer by Mass Mutual, which represents the industry's current practice, puts people who have blood abnormalities that are not terminal or life-threatening in the same category as a carrier of the AIDS antibody, a pure and simple form of reverse discrimination.

To Peter Hiam, the insurance industry's early call for widespread testing demonstrated its panic. Cognizant of the enormous social and economic implications of a positive AIDS test, not to mention the high potential for a false-positive or false-negative test result, Hiam banned testing in Massachusetts. Barbara Lautzenheiser was well aware of Hiam's actions: "Apparently the Massachusetts Insurance Commissioner doesn't read the newspapers," she chided in her New Orleans speech last spring. "As of April 20, there were 34,513 cases [of AIDS]. That's 2,531 since March 9. That's 60 new cases per day," said the concerned insurance consultant. What was worse, she said, the Centers for Disease Control expected up to 18,000 new cases of AIDS in 1986. Actually, there were only 13,197 new cases that year.

"The number of cases is still doubling," said Lautzenheiser, "but only over 24 months instead of every year. Just think of what I've said — *only* every 2 years doubling instead of every year. That's still horrendous. . . . I don't think the insurers are reacting in haste. I think they are reacting in waste — wasted time for action."<sup>25</sup>

Further proof that the insurance industry is well within its rights to call for testing, Lautzenheiser said, was that the gay male community — the group with the highest risk factor — has called for the greater availability of insurance for AIDS victims, even if the insurance is offered on a more expensive assigned risk pool concept, if testing positive is not considered a preexisting condition. However, "[homosexual men] do not want testing to be a surrogate for classification by sexual orientation," Lautzenheiser said.

Now contrast Lautzenheiser's views with those of Massachusetts state representative David B. Cohen, writing in the *Boston Globe* in August 1987. Citing figures developed by his office in the summer of 1987 from statistics available from the Massachusetts Division of Insurance, Cohen said the following:

There is little evidence to support giving AIDS tests to applicants for life insurance. For all of the dire predictions that a flood of AIDS-related death claims would sweep insurers into insolvency, the fiscal impact of the disease on the industry has been minuscule. In Massachusetts, out of more than \$1.5 billion in death claims, only \$551,000 has been related to AIDS. This amounts to about 15 cents per policy per year. While insurers are quick to point out that the incidence of AIDS may triple by 1991, even a tenfold increase in claims payouts in that time would still amount to only \$1.50 per policy per year. At the same time, it costs \$50 per policy to test for the AIDS virus.<sup>26</sup>

An illustration of the "great debate" going on about the AIDS testing issue came in June 1987 in an edition of the *Sunday Boston Herald*.<sup>27</sup> The editors contrasted, on a single

tabloid page, the viewpoints of pro- and anti-testing advocates. Calling for use of “all appropriate tools at our disposal” to help the nation meet the AIDS crisis was William Bennett, the U.S. secretary of education. Warning that public health can be guarded only “by protecting confidentiality and prohibiting discrimination” was U.S. Rep. Henry Waxman, the Democrat from California.

The salient points of argument from the article:

*Bennett:* Even if routine testing drove a few individuals underground, this would have to be balanced against the crucial need for information that more widespread testing would produce for individuals and for society, information that would save lives.

*Waxman:* We cannot expect people to respond to medical advice if in doing so they jeopardize their jobs, housing, insurance, privacy, children, families and their futures. Misuse of testing and test results could damage the nation's ability to study and understand the AIDS epidemic. What we know about the disease we know because gay men and AIDS patients have volunteered to cooperate with research. If misguided testing drives these people underground, it will only prolong the epidemic.

*Bennett:* Precautions can be taken to guard against violating confidentiality, particularly in identifying sexual partners. This is already being done in many states in cases involving venereal disease.

*Waxman:* Testing policy is uncertain. While the Public Health Service has issued statements opposing discrimination against people who test positive, the Justice Department says discrimination is legal and not the government's problem, even when based on irrational fears. The mixed policy means only individuals who either have nothing to lose or already have the disease will seek testing. Persons who might have been exposed to AIDS and those who might be infectious will avoid testing.

*Bennett:* AIDS tests are not unreliable. In the rare case where a false positive result occurs, this can be resolved by using a follow-up test.

*Waxman:* The test does not indicate who is sick. It pinpoints most, but not all, persons who have been exposed and who are probably infectious. Because the disease is transmitted only by sex and blood, the medical usefulness of tests is limited to blood banks, the individual tested and his or her sexual partners.

In a summation, Waxman stated his fears about a “nightmarish” situation: “Black-market blood tests, forged ID cards, bribed officials, safe houses and fugitives,” all the result of the tyranny of mandatory testing. “A testing policy that does not guarantee that test results will be used fairly and respectfully will be recognized as the house-to-house search that it is. Programs that test, fire and quarantine people will make our America into Anne Frank's Europe,” the congressman wrote.

With all the controversy that the issue has created, with differing opinions expressed by consumers, government, and the insurance industry, the health insurance industry, meanwhile, continues to worry about statistics that estimate claims costs in AIDS cases can run up to \$100,000 a year per case. While health insurers realize they are already covering active workers who are carriers of the AIDS antibody, they say a greater threat is posed by giving insurance to new applicants who could be known or unknown carriers of AIDS.

Blue Cross-Blue Shield, whose health insurance covers 55 percent of the Massachusetts market, says that, for now, it has no plans to require testing for AIDS. It will continue to pay for the treatment and hospitalization of AIDS and any FDA-approved medications,



including AZT. That coverage is subject to the terms and conditions of the individual subscriber's coverage.

According to Dr. James Young, vice president and medical director of Blue Cross-Blue Shield in Massachusetts, handling this problem in any other manner, including blood testing, would be contrary to the mission and role of Blue Cross in the marketplace. Blue Cross, he notes, was established to spread the actuarial risks throughout its entire membership.<sup>28</sup>

Consumers should not expect such generous treatment from the commercial health insurers. These companies have fiduciary obligations to operate profitably, and they can be expected to attack the AIDS problem on two fronts. Existing business, they say, will experience significant rate increases, more restrictive waiting periods, and tougher pre-existing exclusion riders for new employees. They will also attempt to make policy deductibles a percentage of an employee's income. Finally, commercial insurers will attempt to require AIDS blood tests for new employees in certain health insurance programs.

The informational authorization you provide when applying for insurance will also take on new meaning in the AIDS era. Few insurance applicants realize that when they sign an insurance application they also sign a privacy release that relates not only to information on the form itself, but also to facts that may be uncovered during the investigation of their medical history.

The typical authorization seems simple enough: "I hereby authorize any licensed physician, medical practitioner, hospital, clinic or other medically related facility, insurance company, any medical information bureau or other organization, institution, or person having any records or knowledge of me or my health to give the insurance company any such information. A photocopy of this signed authorization shall be valid as the original." In plain English, this statement means: "I authorize anybody with any knowledge about me to give this knowledge to the insurance company." Nowhere does it limit information strictly to the applicant's insurability or ability to pay premiums. The validity of the authorization is not time-limited on most authorization forms.

Consumers who decide to go forward with their insurance should ask ahead of time to see the blood authorization forms and should ask clarifying questions. They are entitled to determine ahead of time what test is deemed necessary by the insurer and whether it includes an AIDS antibody test. If the AIDS antibody test is going to be taken, the company should say so. It should not hide behind the phrase "such testing as may be deemed necessary."<sup>29</sup>

The important thing here is that, while insurance companies have a right to remain financially viable, consumers have a right to know what is going to happen to their privacy and what is going to happen to their blood. After that information has been ascertained, consumers can decide whether to buy insurance from a particular company or whether to find another company that does not require a blood test.

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## The Privacy Issue

There is no question that once a person admits on an insurance application that he or she has taken an AIDS test, insurance underwriters will always consider that person's health suspect. The underwriter will want to know the reason for the test. Was the applicant concerned that sexual promiscuity caused exposure to the AIDS virus? Was the decision



to take the test due to a blood transfusion? Did another underwriter require the test because of the consumer's lifestyle? Whatever the answers, the key to the privacy issue, from an insurance point of view, is understanding that underwriters are trained to err on the side of caution.

In an attempt to help settle the emotional outcry about AIDS, the National Insurance Commissioners Association has created an Advisory Committee on the disease. A member of the committee has offered the following guidelines for testing:

- Prior informed consent must be secured from the applicant regarding the antibody test.
- Insurance companies must apply the test on a nondiscriminatory basis, not on the basis of sexual orientation.
- Health insurance should be available for all persons who test positive.
- All insurance companies should set a specific minimum amount of insurance above which testing would be mandatory.
- Insurance companies should be allowed to test only if the laws of the particular state do not require reporting positive test results to the state health department.

The committee is also concerned that sexual orientation should not be used by insurance companies to make underwriting decisions. Some suggested guidelines for medical and lifestyle questions to be used by insurers are as follows:

- The marital status or living arrangements of insurance applicants should not be used to establish the applicant's sexual orientation.
- The question of gender should not be used to help determine the sexual orientation of the applicant or for further investigation of the applicant.
- Insurance companies should not establish "redlined" districts in which coverage would be denied, as is sometimes done in underwriting fire insurance.
- No applicant for life or health insurance should be rejected because he or she has sought advice or counsel about AIDS from health care professionals.

These are all good suggestions and would go a long way toward settling the AIDS panic that is appearing in more and more segments of American society, both private and commercial. There is no doubt that people who seek insurance have a right to be concerned. If an insurance company in Massachusetts requests a blood test, chances are excellent that the applicant's blood sample will be tested for AIDS. In Kansas, the Home Office Reference Laboratory, whose facilities are used by 85 percent of the nation's insurers, confirmed this in 1986. Several dozen of the more than three hundred companies operating in

Massachusetts, the laboratory said, were requesting AIDS-related tests without the applicants' knowledge.<sup>30</sup>

If there is nothing in an insurance applicant's background to justify such a blood test, and if the insurance seeker wants to avoid the stigma associated with AIDS testing, several options are available. A blood test taken by the applicant's own physician, during an annual checkup, say, is usually acceptable. The applicant should check with different insurers for their testing policies. And there's nothing wrong with the applicant's personal physician using his or her office laboratory to perform the test. Finally, applicants can insist that the insurance company provide them with a letter certifying that the company will not test their blood for the AIDS antibody.

The harsh reality of the privacy issue in the AIDS era, however, is that the implicit confidentiality between doctor and patient may no longer exist. This issue was discussed as early as 1985 in a Washington publication, the *Privacy Journal*, which saw four distinct categories of threats to confidentiality:

First, one's status as a patient with the disease; second, results of blood test possibly showing that an individual carries the AIDS virus and may spread the disease, even though he himself does not have it and may never have it; third, one's identity as a donor of blood, a confidential status now threatened because infected blood transfusions are thought to be one way in which the disease spreads; and finally, one's sexual preference.<sup>31</sup>

The journal makes the point that "everybody seems to want to know who the AIDS patients are," and reminds us that in earlier times, lepers were required to wear warning bells.<sup>32</sup> (That was really an invasion of privacy!)

Perhaps the biggest threat to privacy comes with the increasingly prevalent insurance or job application question, "Do you engage in homosexual activities?" The appearance of AIDS on the medical and insurance horizon gave justification to a horde of officials who would like to have just this sort of information for their files. The tragedy, the *Privacy Journal* notes, is that "this comes at a time when one's sexual preference had just been generally accepted as one's own business, even though there are few, if any, statutes or court decisions recognizing such a right of confidentiality."<sup>33</sup>

Lack of confidentiality in medical records is another issue that has blossomed along with the AIDS epidemic. Despite the alleged protection of medical records, particularly those records which are involved in underwriting life and health insurance, there is no guarantee that such derogatory information can be kept secure. The most prominent keeper of such information for the insurance industry, the Medical Information Bureau, has frequently asserted that its information has not been used in any way that is harmful to insurance applicants.

Founded in 1902, the MIB has stored in its Boston computer information on more than 12 million Americans. If you discount the data-processing system the Social Security Administration uses for programs like Medicare, the MIB probably qualifies as the largest information network in the medical field. Insurance companies that belong to the MIB — those which write most of the life insurance in the United States — can receive your file in less than thirty minutes, at a cost of less than \$1 per inquiry. Part of the authorization on a policy application is permission for the insurance company to go to the MIB for your file — and for the company to give the MIB a report on you.

The MIB says that this information exchange is necessary to provide insurance companies with safeguards against those who may hide medical facts about themselves in order to

gain lower premiums than they would ordinarily be assigned. The MIB does not record specific underwriting decisions, but it does record the content of specific insurance company reports. It maintains that strict rules guarantee confidentiality within its organization and among its member companies, and that it makes every effort to keep its files accurate.

Despite these guarantees, the MIB cannot be depended upon to protect personal privacy, according to some privacy advocates who have criticized the agency. The insurance companies say that the bureau maintains numerous secret codes through which it can enter a derogatory note about an insurance applicant. Yet the MIB refuses to make known to consumers either the conditions that call for such an entry or the codes themselves. According to Neil Day, MIB president, it is in the public's best interest not to have the code list and related data made public. This policy, he says, is consistent with the MIB's primary concern: the high level of confidentiality the agency says it has maintained for many years.

Unlike the federal government, the insurance industry does not classify underwriting data and consumer files with any degree of sophisticated security protection or safeguard from access by any unauthorized personnel. There are no shredders who destroy sensitive medical and mental health information and all types of blood test results. Blanket, unlimited authorizations can be photocopied at any time.

The Federal Privacy Act of 1974 created the Privacy Protection Study Commission. For two years, the panel conducted a review of individual privacy rights which included an examination of the medical-record-keeping practices of the insurance industry. Reporting to President Jimmy Carter in 1977, the commission said its findings and recommendations could serve to safeguard a person's right to be fairly treated, and to be spared unwarranted intrusion.

A major recommendation of the commission's report was that no insurance company should ask, require, or induce an individual to sign any statement authorizing any individual or any institution to disclose information about him or her unless that statement was specific as to its expiration date, which should be reasonable — not to exceed one year, and, in the case of life insurance and noncancelable or guaranteed-renewable health insurance, two years after the date of the policy.

That recommendation has been implemented in a handful of states, including Virginia, California, and Connecticut, as part of state privacy laws. Thus far, Massachusetts has refused to enact similar privacy legislation. This may change, however, when the 1988 state legislature considers a bill filed by the state Insurance Department called the Insurance Information and Privacy Protection Act. This law would pertain to all forms of insurance — life, health, disability, property, and casualty.

The law would protect all data obtained by an underwriter as an applicant sought insurance. Limitations pertaining to informed consent and time periods have been recommended for applicants' medical authorization forms. And the manner in which personal information can be collected by third parties has been defined, with protection afforded the consumer.

Some insurers have voluntarily amended required authorization forms to conform to provisions mandated in states with privacy laws. Most insurers doing business in Massachusetts, however, still require consumers to sign authorization forms that have no expiration date.

And so, the abuse of consumers' privacy goes on in Massachusetts, as insurers continue to use unauthorized practices to detect potential AIDS cases. How can applicants be expected to trust insurers when their record of deceit is known? What the consumer comes



away with is the knowledge that the investigatory authorizations they sign are misleading and deceptive and carry erroneous implications that the signer has given the insurer consent.

Now that the Massachusetts courts have sided with the insurance industry and have prevented the implementation of Insurance Commissioner Singer's more cautionary AIDS blood-testing policy, the deadly antibody is fair game for all insurers selling life insurance. Even consumers applying for modest amounts of life insurance are going to be threatened. There will be the usual blood profile — previously the only requirement in million-dollar cases or where there was suspicion of an abnormal blood chemistry. But now there will be an AIDS test and, in some cases, a drug screening.

The insurers' position, as noted earlier, is that liver cancer, diabetes, and kidney diseases have been discovered during a blood screen, conditions that would not have been spotted were it not for the threat of AIDS. If the consumer is going to be given a free test that could reveal life-threatening problems, they argue, isn't the AIDS test worth the risk?

The answer is, not really. Consumers can have blood tests taken by their personal physician and avoid the potential loss of privacy, the effect of an unauthorized disclosure of false positives, and the impact on their insurability and employment.

Until legislation is enacted to clarify these authorization forms, all consumers are in jeopardy. For example, the form provided by the Prudential Insurance-owned GIB Laboratories of Newark, New Jersey, says the following:

The blood drawn from you today will be sent to GIB Laboratories, where it will be subjected to such testing as deemed necessary or desirable by the requesting insurance company. This may include testing for human T-cell lymphotropic virus-type III antibodies, associated with acquired immunodeficiency syndrome (unless precluded by law). The results of the testing will be reported to the requesting insurance company for use by it and/or its affiliates in considering you for insurance. These results may also be reported to any reinsurer, to other companies to whom you apply for insurance or submit claims, and to the Medical Information Bureau for the use and purposes set forth in the notice on your application for insurance.

The form provided by the insurance industry's largest blood-testing facility — the Home Office Reference Laboratory — tells you that HORL will perform some or all tests (if permitted by law) on the basis of standing instructions from the insurance company. The tests include blood profile, T-cell count and ratio, hemoglobin ALC, apolipoprotein, full drug screen, CBC, and HIV (HTLV-III) antibody screen.

Again, there is an attempt to deceive the applicant. If the standing instructions from the insurance company call for a full drug screening and an AIDS antibody screening, the consumer should be told. He should not be misled into thinking that because he has led a clean life, the insurer will not test his blood for drugs or the AIDS antibody.

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## Searching for Solutions

With AIDS-related discord growing daily among the public, the insurance industry, and the industry's regulators, government agencies have attempted to develop solutions to the problems that the disease presents to all segments of society. None of these efforts have been completely successful; some have been rejected or modified to the point where matters have returned to pre-action status in several states. There is no easy solution. Whatever attempts are made to track the disease and provide for its costs are bound to meet

with civil and human rights objections, regulatory and health service omissions and violations of policy, and violations of policies already established by existing statutes. The courts, indeed, have not heard the last of the AIDS issue.

If insurance companies are to be believed, the only legitimate concern underlying their demands to test life insurance applicants for AIDS is an effort to avoid insuring individuals with a limited life expectancy. No one, even unfortunates who have the dread disease, can quarrel with that reasoning. The public realizes that no insurer wants to write fire insurance on a burning building.

But until the federal government or state governments can establish pools to provide life insurance for uninsurable applicants — carriers of AIDS and persons who have terminal cancer and other terminal conditions — these persons will have to seek coverage through guaranteed-issue forms of group insurance, or make other arrangements to protect their estates.

However important it may be, the issue raised by the insurers in the AIDS-testing controversy — the need to underwrite for a profit and to protect policyholders and shareholders from adverse financial consequences — is not their entire concern. This is a public relations ploy used to conceal the real issue.

An examination of the Dukakis administration's proposed testing regulations, whose implementation is ultimately dependent upon the decision of the courts, shows that insurers not only want to keep out AIDS-infected applicants, but also persons whose lifestyle includes promiscuous sexual behavior or drug use that could ultimately result in becoming infected with the virus. The thirty-three-page proposal, in fact, represents the potential for the greatest bad for the greatest number of persons. The section entitled "Prohibited Practices" contains the crux of the regulations:

- No insurer shall make any underwriting decision on the basis of nationality, sexual orientation or proxies for sexual orientation such as lifestyle, living arrangements, marital status, beneficiary designation, employment, and residence. This means an applicant may not be denied insurance coverage, charged an additional premium or be requested or required to submit to AIDS-related tests on the basis of any of these factors. To the extent that employment, residence, or marital status [is] used in a manner that is clearly unrelated to sexual orientation, it may be used for underwriting purposes to the extent such use is permitted under any other applicable law or regulation.
- No insurer shall seek to elicit, either directly or through an investigation conducted by another on its behalf, any information designed to determine an applicant's sexual orientation. It is also the insurer's duty to inform its staff and any other support organization about any such information included in any report or otherwise communicated.
- Insurers shall not use the fact that an individual has sought or received counseling related to AIDS or AIDS-related complex to deny coverage or otherwise evaluate insurability. Insurers are prohibited from seeking information specifically related to AIDS or ARC counseling either on an application or in the course of their investigations.



Included in the proposed regulation is an elaborate provision designed to safeguard the confidentiality of all information pertaining to AIDS-related blood testing. Severe penalties are recommended for violation of these provisions. That's all fine, but what about protection of the confidentiality of results of other types of blood tests and other records pertaining to consumers' physical and mental health which represent a component part of their life insurance file? These are those sensitive psychiatric histories, confinements in alcoholic rehabilitation clinics, coronary and cancer histories, and blood tests involving abnormal blood chemistries.

Insurers in Massachusetts, meanwhile, continue to duck and dodge the AIDS bullet. Some insurers plan to avoid becoming embroiled in controversy and costly lawsuits by increasing the size of their minimum policy to \$125,000 or \$150,000, well above the minimum testing requirement threshold. To avoid attacks by the civil libertarians, they will be forced to determine the lifestyle risk solely on the basis of the blood test results. In another move we'll see more of, group life insurance underwriters who are denied the opportunity to test applicants for AIDS can be expected to substantially reduce the amounts of guaranteed-issue life insurance coverage provided under their contracts. And the cost of term insurance — a temporary, inexpensive coverage — for applicants under age forty can be expected to dramatically increase in order to compensate insurance companies for the added costs of blood tests and confidentiality compliance in the proposed Massachusetts regulations.

Finally, consumers who relied on their group insurance for the major portion of their life insurance protection will have to turn to the individual market, one that will effectively be discriminating against the young buyer of smaller policies. Policies in amounts of \$100,000 or less will be scarce, and the cost of term policies that will be available can be expected to increase by as much as 50 percent.

In the absence of any short-term medical breakthrough that could provide a cure for AIDS, we can only hope that the Massachusetts courts will resolve the testing issue before them so that the rights of Massachusetts insurance consumers will be protected. This means that whenever insurers intend to test for the AIDS antibody, consumers should be so advised. Only responsible, experienced blood laboratories should be used, and every effort should be employed to preserve the confidentiality of the test results.

In a decision that is indicative of the income that AIDS screening could develop, Transamerica Occidental Life earlier this year said that it is going to finance and will be part owner of a new testing laboratory for insurance companies.

James Dederer, Transamerica senior vice president, said that his company's initial startup capital contribution will be approximately \$9 million. He said that the new laboratory, one of three in the United States that will serve insurance companies exclusively, will focus on future markets as the demand for services increases. Transamerica is teaming up with Jim Osborn, who pioneered the use of blood profiles in underwriting and was the founder of the Home Office Reference Laboratory, which he sold in 1983 to Business Men's Assurance Company.

Osborn said that in 1987, approximately 1 million tests were performed for insurance purposes, generating about \$1 million in revenues. "If most insurance companies shift to testing at the \$100,000 level, a trend which is already well under way," he noted, "the potential market will be over 5 million tests annually."

The Life Insurance Marketing Research Association reports that only about 2 percent of the 17.1 million life insurance policies written in 1985 provided coverage of \$300,000



or more, while 25 percent were for \$100,000 or more. Some have estimated that AIDS screening alone could produce \$500 million a year in the testing business within a few years.<sup>34</sup>

Despite assurances from David Carpenter, chairman and chief executive officer of Transamerica Occidental, that confidentiality is a critical factor, particularly with the AIDS crisis, and that precautions will be taken to ensure such privacy, the very fact that at least two insurers could have access to blood-testing results — as could happen when Transamerica tests for other insurers — raises additional legitimate consumer concerns about privacy.

Industry spokesperson Barbara Lautzenheiser was asked whether entry to a blood-testing file by another insurer would be considered a conflict of interest and a detriment to consumer interest — since the risk of privacy abuse would increase because both the insurance company being applied to *and* a competing insurer would have access to the test results. She responded that because of consumers' legitimate concerns, Transamerica would be extra-sensitive to the need for adequate privacy controls and confidentiality.

As we approach the presidential nominating conventions of the Democratic and Republican Parties, one has to wonder how many of the candidates may have already foregone the opportunity to purchase additional life insurance, the need for which has been created by campaign debts incurred and the risks inherent in the job they seek. No doubt, they have been reluctant to take the required insurance company blood test to determine the presence of the AIDS antibody, because of the fear that a false-positive result could immediately destroy their candidacy. 🐼

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**"***And I don't know what my life expectancy is going to be, but I certainly know the quality is improved. I know that not accepting the shame or the guilt or the stigma that people would throw on me has certainly extended my life expectancy. I know that being very up-front with my friends, and my family and coworkers, reduced a tremendous amount of stress, and I would encourage people to be very open with friends and if they can't handle it then that's their problem and they're going to have to cope with it.***"**